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09/804,664	03/12/2001	Jill E. Barad	MAT 3C7B	2442

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EXAMINER
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ART UNIT	PAPER NUMBER
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3711

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/804,664  
Filing Date: March 12, 2001  
Appellant(s): BARAD ET AL.

**MAILED**

**FEB 13 2006**

**Group 3700**

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Charles H. DeVoe  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed October 31, 2005 appealing from the Office action mailed February 9, 2005.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

The grounds of rejection as stated in the Final Rejection (filed February 9, 2005), and are incorporated herein in their entirety by reference.

**(10) Response to Argument**

The present invention relates to personalized toys and methods for marketing, manufacturing and delivering personalized toys.

Zerbo discloses a package (container 10) having an aperture (*window opening 12*); a personalized toy (flowers F, for example, which can be used for amusement or diversion)(*flowers F, for example, which can be used for amusement or diversion*) in the package (container 10); and printed material (18), separate from the toy (*flowers F, for example, which can be used for amusement or diversion*) and further including customer-defined identifying material (*printed matter which is directed to configuration of the toy desired by the person that has the package*), supported on the package (*container 10*) so that the identifying material (*printed matter which is directed to configuration of the toy desired by the person that has the package*) is visible through the aperture (*window opening 12*) of the package (*container 10*) and where the identifying material includes a customer-defined intended recipient (*the intended recipient being the person or purchases or receives the package in the particular desired configuration*); a flap (*cover 11*), separate from the toy (*flowers F, for example, which can be used for amusement or diversion*) and having an inside and an outside,

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where the inside of the flap (*cover 11*) faces the personalized toy; an aperture (window opening 12) in the flap (*cover 11*); and a customer-defined identifying material separate from the flap (*cover 11*) and supported on the inside of the flap (*cover 11*), wherein the customer-defined identifying material includes a customer-defined intended recipient (*the intended recipient being the person or purchases or receives the package in the particular desired configuration*);; the identifying material includes a customer-defined toy name (col. 3, lines 4-12); a toy-support card to display the personalized toy (*flowers F, for example, which can be used for amusement or diversion*) within the package (*container 10*), the customer-defined identifying material has a front side and a back side, wherein the front side of the material is visible through the aperture (*window opening 12*) on the outside of the flap (*cover 11*) and the back side is visible on the inside of the flap (*cover 11*); the inside of the flap (*cover 11*) includes tabs (*pocket 15*) configured to support the identifying material (18) on the inside of the flap (*cover 11*); the flap (*cover 11*) is adapted to be opened to reveal the personal toy (*flowers F, for example, which can be used for amusement or diversion*); the personalized toy (*flowers F, for example, which can be used for amusement or diversion*) is visible through the aperture (*window opening 12*) when the identifying material (18) is removed; the visible portion of the identifying material (18) blocks the aperture (*window opening 12*) (see *Figure 2*), preventing the viewing of the personalized toy (*flowers F, for example, which can be used for amusement or diversion*) from the exterior of the package (*container 10*); a toy-support card (16) to display the personalized toy within the package (*container 10*).

Applicant argues that Zerbo does not disclose a “toy”. The Applicant states that Zerbo does not mention the word “toy” in the disclosure nor discusses related concepts such as “play”, “child”, “fun”, “game”.

The Examiner submits that Zerbo teaches a toy in the broadest reasonable interpretation of the word to mean as anything that can be used for amusement or diversion. For example, it is well known that an inquisitive toddler would consider any tangible object to be a toy.

Applicant further argues that Zerbo fails to disclose a “personalized toy”.

Again, the Examiner submits that broadly interpreting the terms “personalized toy”, could be interpreted as an object for amusement or diversion that is directed toward a particular individual (in this case, the person who receives the packaged artificial flowers).

Applicant further contends that Zerbo does not disclose “customer-defined identifying material”.

As discussed *supra*, Zerbo does show “customer-defined identifying material” with the identification of the toy name (flower) (col. 3, lines 4-12).

Applicant maintains that Zerbo does not disclose a “customer-defined intended recipient”. The limitation “customer-defined intended recipient” does not provide any structural features to distinguish it over Zerbo. This is merely the printed matter on the identifying material. Furthermore, if this package were mailed out to a buyer or mailed out as a gift, it would be entirely obvious to provide the customer-defined intended recipient on the identifying material.

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For the above reasons, it is believed that the rejections should be sustained.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Conferees:

Eugene L. Kim

Kien T. Nguyen

Urszula M. Cegielnik